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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/878,346	06/12/2001	Robert R. Griffioen	91436-335	2185
22463	7590	06/23/2004	EXAMINER	
SMART AND BIGGAR 438 UNIVERSITY AVENUE SUITE 1500 BOX 111 TORONTO, ON M5G2K8 CANADA			NAHAR, QAMRUN	
			ART UNIT	PAPER NUMBER
			2124	

DATE MAILED: 06/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/878,346

Applicant(s)

GRIFFIOEN ET AL.

Examiner

Qamrun Nahar

Art Unit

2124

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 June 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 June 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☒ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

1. Claims 1-24 have been examined.

Oath/Declaration

2. The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.

The oath or declaration is defective because:

Non-initialed and/or non-dated alterations have been made to the oath or declaration. See 37 CFR 1.52(c).

It does not state that the person making the oath or declaration acknowledges the duty to disclose to the Office all information known to the person to be material to patentability as defined in 37 CFR 1.56.

Claim Objections

3. Claim 1 is objected to because of the following informalities: "utilising" on line 4 of the claim should be "utilizing". Appropriate correction is required.
4. Claim 2 is objected to because of the following informalities: "utilising" on line 1 of the claim should be "utilizing". Appropriate correction is required.
5. Claim 8 is objected to because of the following informalities: "utilising" on line 1 of the claim should be "utilizing". Appropriate correction is required.

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6. Claim 18 is objected to because of the following informalities: "utilise" on line 9 of the claim should be "utilize". Appropriate correction is required.
7. Claim 19 is objected to because of the following informalities: it is missing a period. Appropriate correction is required.
8. Claim 22 is objected to because of the following informalities: "utilising" on line 4 of the claim should be "utilizing". Appropriate correction is required.
9. Claim 23 is objected to because of the following informalities: "utilise" on line 7 of the claim should be "utilize". Appropriate correction is required.
10. Claim 24 is objected to because of the following informalities: "utilising" on line 2 of the claim should be "utilizing". Appropriate correction is required.
11. Claim 24 is objected to because of the following informalities: "utilising" on line 7 of the claim should be "utilizing". Appropriate correction is required.

Claim Rejections - 35 USC § 112

12. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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13. Claim 16 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 16 recites the limitation "before said sending" on line 2 of the claim. It is indefinite as to which sending this limitation is referring to. This limitation is interpreted as "before said sending said identification information and said existing firmware version indicator".

Claim Rejections - 35 USC § 102

14. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

15. Claims 1-7, 10, 12-17 and 22-24 are rejected under 35 U.S.C. 102(e) as being anticipated by Chiles (U.S. 6,581,157).

Per Claim 1:

The Chiles patent discloses:

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- **a method for upgrading existing firmware on third party hardware** (“a method for updating a memory image in a non-volatile programmable memory in a device in a computing system is provided.” in column 3, lines 36-38)

- **receiving identification information for said third party hardware and a firmware version indicator for said existing firmware on said third party hardware** (“During system initialization, the version manager 32 determines the version of the device 50a by retrieving the device version 62 in the non-volatile memory 60 of the device 50a.” in column 7, lines 40-43)

- **utilizing said identification information to obtain a stored firmware version indicator for said third party hardware; comparing said received firmware version indicator with said stored firmware version indicator, if said received firmware version indicator differs from said stored firmware version indicator, retrieving upgrade firmware for upgrading said existing firmware from a remote location** (“The version manager 32 compares the device version 62 with the updated device version, stored in the device driver 30 memory. If the device version 62 of the device 50a is not the same as the updated device version, the device driver 30 converts the memory image in the non-volatile memory 60 of the device 50a to the updated memory image.” in column 7, lines 43-49).

Per Claim 2:

The Chiles patent discloses:

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- wherein said utilizing said identification information is also to obtain a stored address which addresses said remote location and wherein said retrieving comprises connecting to said remote location as specified by said address (column 6, lines 30-33 and lines 62-67).

Per Claim 3:

The Chiles patent discloses:

- wherein said address is an Internet Protocol (IP) address (column 6, lines 30-33).

Per Claim 4:

The Chiles patent discloses:

- further comprising upgrading said existing firmware with said upgrade firmware (column 7, lines 43-49).

Per Claim 5:

The Chiles patent discloses:

- wherein said upgrading comprises sending said upgrade firmware to a controller for said third party hardware (column 7, lines 43-49).

Per Claim 6:

The Chiles patent discloses:

- wherein said retrieving also comprises retrieving an upgrade firmware version indicator (column 7, lines 40-43).

Per Claim 7:

The Chiles patent discloses:

- wherein said retrieving also comprises retrieving an upgrade firmware version indicator and wherein said upgrading further comprises sending said upgrade firmware version indicator to said controller (column 7, lines 40-49).

Per Claim 10:

The Chiles patent discloses:

- wherein said identification information comprises a manufacturer identifier and a part identifier (column 6, lines 46-55).

Per Claim 12:

The Chiles patent discloses:

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- wherein said upgrading comprises sending upgrade messages to said third party hardware over a serial link to transfer said upgrade firmware version indicator and said upgrade firmware to said third party hardware (column 9, lines 19-31 and column 10, lines 4-31).

Per Claim 13:

The Chiles patent discloses:

- wherein each upgrade message comprises a fragment indicator to indicate whether or not said each upgrade message is the last upgrade message in a sequence of upgrade messages for transferring said upgrade firmware and said upgrade firmware version indicator (column 9, lines 19-31 and column 10, lines 4-31).

Per Claim 14:

The Chiles patent discloses:

- further comprising awaiting a reply message after sending said each upgrade message (column 9, lines 19-31 and column 10, lines 4-31).

Per Claim 15:

The Chiles patent discloses:

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- **a method for upgrading existing firmware on third party hardware** (“a method for updating a memory image in a non-volatile programmable memory in a device in a computing system is provided.” in column 3, lines 36-38)

- **sending a request to said third party hardware requesting identification information and an existing firmware version indicator; receiving a reply from said third party hardware with said identification information and said existing firmware version indicator** (“The device version detector 240 verifies the device version by checking the device version 162 stored in the non-volatile memory 160. The device version detector 240 may send a bus message having a request for the device version 162 over the interconnection system 40 to the ATM/ADSL adapter 250. The device version detector 240 uses the standard interface provided by the operating system for the ATM/ADSL adapter driver 230 to communicate the request to the ATM/ADSL adapter 250. The ATM/ADSL adapter 250 sends a bus message having data including the device version back to the device version detector 240.” in column 9, lines 48-58)

- **sending said identification information and said existing firmware version indicator addressed to an address; receiving an upgrade firmware version indicator and upgrade firmware; transferring said upgrade firmware version indicator and said upgrade firmware to said third party hardware** (column 9, lines 59-67 to column 10, lines 1-29).

Per Claim 16 (as best understood):

The Chiles patent discloses:

- further comprising: before said sending said identification information and said existing firmware version indicator, comparing said existing firmware version indicator with a stored firmware version indicator and sending only if said existing firmware version indicator differs from said stored firmware version indicator (column 9, lines 59-67 to column 10, lines 1-29).

Per Claim 17:

The Chiles patent discloses:

- wherein said sending a request comprises sending a request on power-up (column 6, lines 13-21).

Per Claim 22:

This is a system version of the claimed method discussed above, claim 1, wherein all claim limitations also have been addressed and/or covered in cited areas as set forth above.

Thus, accordingly, this claim is also anticipated by Chiles.

Per Claim 23:

This is a computer-readable medium version of the claimed method discussed above (claims 15 and 16), wherein all claim limitations also have been addressed and/or covered in cited areas as set forth above. Thus, accordingly, this claim is also anticipated by Chiles.

Per Claim 24:

This is another version of the claimed method discussed above (claims 15 and 16), wherein all claim limitations also have been addressed and/or covered in cited areas as set forth above. Thus, accordingly, this claim is also anticipated by Chiles.

Claim Rejections - 35 USC § 103

16. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

17. Claims 8-9, 11 and 18-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chiles (U.S. 6,581,157) in view of Stupek (U.S. 5,960,189).

Per Claim 8:

The rejection of claim 2 is incorporated, and further, Chiles does not explicitly teach wherein said utilizing comprises querying a database with said identification information for a record having said stored version indicator and said stored address. Stupek teaches wherein said utilizing comprises querying a database with said identification information for a record having said stored version indicator and said stored address (column 6, lines 59-67 to column 7, lines 1-6).

It would have been obvious to one having ordinary skill in the computer art at the time of the invention was made to modify the method disclosed by Chiles to include wherein said utilizing comprises querying a database with said identification information for a record having said stored version indicator and said stored address using the teaching of Stupek. The modification would be obvious because one of ordinary skill in the art would be motivated to store and retrieve information more efficiently.

Per Claim 9:

The rejection of claim 8 is incorporated, and Stupek further teaches further comprising receiving said database, said database having a plurality of records each comprising identification information, a version indicator, and an address (column 6, lines 59-67 to column 7, lines 1-6).

Per Claim 11:

The rejection of claim 8 is incorporated, and Chiles further teaches wherein said stored version indicator is a stored version number and wherein said received version indicator is a received version number (column 6, lines 46-55).

Per Claim 18:

This is a system version of the claimed method discussed above (claims 1 and 8), wherein all claim limitations also have been addressed and/or covered in cited areas as set forth above, including "a local area network (LAN) interface for connection to a LAN; a wide area network

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(WAN) interface for connection to a WAN; a master processor” (Chiles, column 8, lines 42-67 to column 9, lines 1-8) and “a memory for storing a database” (Stupek, column 3, lines 50-52).

Thus, accordingly, this claim is also obvious.

Per Claim 19:

The rejection of claim 18 is incorporated, and Chiles further teaches a controller for said third party hardware having a controller LAN interface, a serial interface for connection to said third party hardware, and a controller processor (column 8, lines 42-67 to column 9, lines 1-8).

Per Claim 20:

The rejection of claim 19 is incorporated, and Chiles further teaches wherein said controller processor is operable to: send a request message to said third party hardware interface requesting identification information and a firmware version indicator; receive a reply message over said third party hardware interface with said identification information and said firmware version indicator (column 9, lines 48-58); send said identification information and said firmware version indicator from said controller LAN interface addressed to an address for said master processor; receive an upgrade firmware version indicator and upgrade firmware over said controller LAN interface; send upgrade messages to said third party hardware interface in order to send said upgrade firmware version indicator and said upgrade firmware over said third party hardware interface (column 9, lines 59-67 to column 10, lines 1-29).

Per Claim 21:

The rejection of claim 20 is incorporated, and Chiles further teaches wherein said controller processor is operable to send said request on power-up (column 6, lines 13-21).

Conclusion


18. Any inquiry concerning this communication from the examiner should be directed to Qamrun Nahar whose telephone number is (703) 305-7699. The examiner can normally be reached on Mondays through Thursdays from 9:00 AM to 6:30 PM. The examiner can also be reached on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kakali Chaki, can be reached on (703) 305-9662. The fax phone number for the organization where this application or processing is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-3900.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

QN
June 8, 2004


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SUPERVISORY PATENT EXAMINER
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